APPENDIX I.

IN THE UNITED STATES COURT OF APPEALS
For the Seventh Circuit.

SEPTEMBER TERM, 1958—APRIL SESSION, 1959.

No. 12562

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, as Trustees of the United Mine Workers of America Welfare and Retirement Fund,
Plaintiffs-Appellees,
vs.
QUALITY COAL CORPORATION, an Indiana Corporation,
Defendant-Appellant.

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

August 18, 1959.

Before DUFFY, *Chief Judge*, and SCHNACKENBERG and CASTLE, *Circuit Judges*.

CASTLE, *Circuit Judge*. Plaintiffs John L. Lewis, Henry G. Schmidt and Josephine Roche, as Trustees of the United Mine Workers of America[1] Welfare and Retirement Fund, by their second amended complaint, in the district court sought recovery of a money judgment against Quality

1. United Mine Workers of America are herein sometimes called the Union.

Coal Corporation, an Indiana corporation (herein called Quality), defendant, based upon agreements known as The National Bituminous Coal Wage Agreement of 1950 as Amended Effective September 1, 1955 as Amended Effective October 1, 1956, herein referred to as the 1950 agreement, or the agreement.

Quality answered, denying *inter alia* that it owed any money, and averring that said agreement was invalid.

Plaintiffs and Quality each filed a motion for summary judgment. In opposition to plaintiffs' motion and in support of its own motion, Quality attached 10 affidavits.

The district court found that "there is no genuine issue of fact to be submitted to the trial court as to plaintiffs' motion for summary judgment" and thereupon entered judgment accordingly. The district court found, however, that "a question of fact is raised by defendant's motion for summary judgment," and that "defendant is not entitled to judgment as a matter of law"; it thereupon denied Quality's summary judgment motion. By its judgment the district court ordered and decreed that plaintiffs recover of Quality the sum of $84,176.40, with interest and costs. Quality has appealed, seeking our review of the actions of the district court.

Plaintiffs' second amended complaint makes the following material averments:

> Plaintiffs are trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950 created by contract dated March 5, 1950.
>
> Quality signed the National Bituminous Coal Wage Agreement effective September 1, 1955, and a similar Agreement effective October 1, 1956, in which it agreed to pay forty cents (40¢) per ton for all coal produced during these periods of time[2] during the dates herein mentioned, Quality produced 210,440.99 tons of coal

2. Between October 1, 1955 and November 30, 1957.

and by virtue of said contracts, it was indebted to the plaintiffs in the sum of $84,176.40.

The record reveals no dispute as to the correctness of the foregoing recital.

Quality denies the validity of the agreement as being contrary to law, and hence says it is not indebted to plaintiffs. Quality contends, on several grounds, that, as a matter of law, the judgment below should be reversed.

1. It contends that plaintiffs cannot sue as trustees, for the reason that no trust has ever arisen or been established as to the money sued for, because no money had ever been transferred or delivered to the alleged Fund. However, the agreement provides:

> "Title to all moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund, * * *."

Under this language a trust was created, the corpus of which was any money transferred or delivered by Quality to the trustees for the purposes of the agreement or which Quality became obligated to transfer to the trustees for that purpose. We hold that a trust was created.

2. The agreement sued on provides:

> "* * * It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, *to the extent and in the manner permitted by law* * * *." (Italics supplied.)

Quality contends that this language provides for a closed shop, thus violating 29 U. S. C. A. § 158 (a) (3), which reads:

> "(a) It shall be unfair labor practice for an employer—
>
> * * * * *
>
> (3) by discrimination in regard to hire or tenure

> of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this sub-chapter, * * * shall preclude an employer from making an agreement with a labor organization * * * to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later * * *."

The provisions of § 158 (a) (3) do not prohibit as unfair labor practice, or invalidate, collective bargaining agreements requiring union membership as a condition of employment provided becoming such a member may be deferred to or after the thirtieth day following the beginning of employment, or effective date of the agreement, whichever is later.

Of course, without the portion italicized above the provisions of the agreement here under consideration would violate § 158. *Lewis* v. *Jackson & Squire*, D. C. 86 F. Supp. 354. It would, without reservation or limitation as to time of joining, require union membership as a condition of employment. But the qualifying phrase "to the extent and in the manner permitted by law" expressly modifies and limits the application of the clause relating to union membership so that any requirement it imposes is conditioned on conformity to existing or future law. The provision of the agreement relating to union membership is thus limited and qualified by its expressed terms so that it imposes no requirement as a condition of employment which would conflict with 29 U. S. C. A. § 158 (a) (3) or any other law.

Lewis v. *Fentress Coal & Coke Co.*, 160 F. Supp. 221 (affirmed, 264 F. 2d 134), involved the same contract now before us. It was held that the union membership provision did not violate a Tennessee statute prohibiting contracts making union membership a condition of employment nor

violate 29 U. S. C. A. Sec. 158 (a) (3). The District Court referred to the language "to the extent and in the manner permitted by law" as a "savings clause". We are dubious as to whether such description was apt. The language employed is not couched in the form usually employed in a so-called "savings clause." It is language which serves to restrict and modify the words of the same sentence in which it is employed and relates to that subject matter alone. Here the meaning and intent of the contractual provision involved is fully expressed in one sentence. No general requirement is imposed, limitations on which, must be searched for in some other separate provision or clause of the contract. The qualified condition imposed is expressed as one complete provision. Its application is not to be measured by some standard found elsewhere in the contract. We agree, however, with the view expressed by the District Court in *Fentress* that the phrase in question is "clear and unequivocal".

We further agree with *Fentress* that cases such as *N. L. R. B.* v. *Gottfried Baking Co.*, 2 Cir., 210 F. 2d 772; *N. L. R. B.* v. *Gaynor News Co.*, 2 Cir., 197 F. 2d 719 and *Red Star Express Line of Auburn* v. *N. L. R. B.*, 2 Cir., 196 F. 2d 78 are distinguishable. In *Gottfried* the agreement contained a union security provision which on its face and by its very terms was illegal. The court found that a separate "savings clause" was "too lacking in specificity" to prevent the preferential hiring provision from constituting an unfair labor practice. *Gaynor* involved a contract containing a union security provision also by its terms illegal. The court found that a general savings clause "which only postponed" the issue of the legality of the closed shop provision for future determination by some proper tribunal did not prevent the provision from being a violation of law. In *Red Star Express Lines* the union security provision was concededly illegal under the Taft-Hartley Act.

The parties to the contract by letter agreed upon an addendum which, because of its vague language, the court found did not have the effect of preventing the security provision from being a violation of the Act.

In the instant case validity of the union membership provision is not dependent upon some vague or indefinite savings clause. Its validity is assured and protected by the very language in which the condition of union membership is stated. This is not the case of a provision illegal by its terms which must be sustained, if at all, by resort to some independent general savings clause. It is a case where the provision is qualified by its own terms so that it meets the test of legality. We conclude that the union membership provision in question does not violate 29 U. S. C. A. § 158 (a) (3).

The validity of the agreement is not affected by any conduct or practice of the parties which would constitute an unfair labor practice under 29 U. S. C. A. § 158 (a) (3). At most, such conduct or practice, not authorized by the agreement itself, would show that the Union and Quality violated applicable law. It would not alter or change the terms of the agreement. *Lewis v. Fentress*, 160 F. Supp. 221 (227).

3. Quality further contends the agreement is void because of duress. It relies, in this respect, on allegations of its Answer that because of concerted activities and threats by the union it extended the agreement in order to avoid strikes and work stoppages, and on the affidavit of its president that he executed the agreement against his free will and that of the corporation. In *American Brake Shoe Co. v. N. L. R. B.*, 244 F. 2d 489, we recognized that the right to engage in a lawful strike is a protected concerted activity. The threat to cause a legal strike and its attendant work stoppage does not of itself constitute duress. And

mere inequality in economic bargaining power is not legal unfairness which will permit either party to avoid a contract. *Birmingham* v. *Bartels*, 157 F. 2d 295. We find no merit in Quality's claim of invalidity of the agreement because of duress.

4. Quality's contention that the agreement is unenforceable because of lack of mutuality likewise lacks substance. A collective bargaining agreement, such as the one containing the Welfare and Retirement Trust Fund provisions herein involved, is as against the employer, a "contract". Corbin on Contracts (1951), Vol. 6, Sec. 1420, Pg. 621. Collective bargaining contracts are enforceable against the employer. *Employees* v. *Westinghouse Electric Corp.*, 348 U. S. 437 (461).

5. The contention that indispensable parties are lacking is fully answered by our decision in *Lewis* v. *Quality Coal Corp.*, 243 F. 2d 770-(772) *cf. United States* v. *Carter*, 353 U. S. 210 (220); *U. S. v. Embassy Restaurant*, 358 U. S. 811.

The judgment of the District Court is therefore

AFFIRMED.

APPENDIX I-A.

Dissenting Opinion of Circuit Judge Schnackenberg.

No. 12562.

SCHNACKENBERG, *Circuit Judge*, dissenting.

I must dissent, I believe we are required by the Labor Management Relations Act, 1947, 29 U.S.C.A. § 141 *et seq.*, to hold this agreement unlawful, and that the defense of illegality is good. It is admitted that sec. 158 (a) (3) of said Act forbids a closed shop agreement. The agreement upon which plaintiffs sue provides:

> "* * * It is further agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, to the extent and in the manner permitted by law. * * *"

Moreover, admitted facts[1] in the record show that in the operation under the agreement at Quality's mines a closed shop has been rigorously maintained.

Faced with the defense of illegality, plaintiffs seek refuge in what they call a "savings clause" reading: "to the extent and in the manner permitted by law". Here is a group of vague words which may have been fashioned to accommodate a general form of contract to the diverse labor

1. An employee when hired had to join the Union by the morning of the third day or get fired, and, if a nonunion employee refused to join, then the union employees would refuse to work on instructions from the Union.

The constitution of the Union states simply:—

> "That all members of the organization shall refuse to work in and around a mine where a man or men work that does not belong to the Union."

No new employees were permitted to work for Quality more than three days (not thirty days) if they did not join the Union.

laws of various states, *i.e.*, *Lewis* v. *Fentress C. & C. Co.*, 160 F. Supp. 221, 227. Certainly the language of sec. 158 (a) (3) of the *federal* act does not "permit" a closed shop to *any extent* or in *any manner*, and no one argues that it does. Hence, the words of the "savings clause" exclude their applicability to the prohibition of sec. 158 (a) (3) of the federal act. Moreover, the meaning of this ambiguous language is settled for the purposes of this case by the interpretation which the Union and Quality have, in performance, placed upon it. By their strict maintenance of a closed shop, they have realistically interpreted it as "saving" the closed shop, the federal act to the contrary notwithstanding. Of course, in a court of law, where a federal act and a private contract conflict, the contract must fall. It becomes wholly unenforcible, especially where, as here, it contains a provision to the effect that all parts are dependent on each other.[2] The effect of this very provision was emphasized by Judge, now Justice, Stewart, in *Lewis* v. *Benedict Coal Corp.*, 259 F. 2d 346, 354.

Moreover, the agreement before us lacks a separability clause, such as appeared in the contract in the *Rockaway* case (*N. L. R. B.* v. *Rockaway News Supply Co.*, 345 U. S. 71, 78) unjustifiably relied on by plaintiffs here.

The term "saving clause" is well known to legislative draughtsmen. It is used to save pending matters from the effect of amendatory or repealing legislation. 82 C. J. S. 1014. In its unique application to this case, however, its venerable purpose is perverted and it is being used to breathe life into a private contract which admittedly, but for the saving clause, contains a provision violating an act of Congress. This contract is now sanctioned by this court. As far as this case is concerned, by judicial decision

2. INTEGRATED INSTRUMENT—This Agreement is an integrated instrument and its respective provisions are interdependent • • •.

a part of a federal act has in effect been repealed. The act was not saved; a contractual provision in violation of the act is saved.

The majority opinion would rely upon the possibility of a union shop being permissible under the agreement before us. The term union shop is used to indicate the situation where the employer is permitted to employ non-union workers, but such workers are required to join the union as a requisite to continuing work. 90 C. J. S. 1044. The right to make an agreement for a union shop is recognized by a proviso in § 158 (a) (3) of the federal Act:

> "* * * That nothing in this subchapter, or in any other statute of the United States, shall preclude an employer *from making an agreement* with a labor organization * * * to require as a condition of employment membership therein *on or after the thirtieth day* following the beginning of such employment or the effective date of such agreement, whichever is the later, * * *." (Italics supplied.)

However, there is no contention by anyone in the case at bar that the Union and Quality ever made an *agreement* for a union shop, which is necessary under the foregoing proviso, and as recognized by analogy in the recent case of *Railway Employes' Dept.* v. *Hanson*, 351 U. S. 225, 231, 232, construing 45 U. S. C. A. § 152, Eleventh (a). No agreement for a union shop was made. An act of congress does not create an agreement. No union shop agreement exists in this case. There is only an invalid closed shop agreement, and the parties, by their conduct, have shown that that is the only agreement which they recognize.

I agree with the reasoning of the Second Circuit, in *N. L. R. B.* v. *Gottfried Baking Co.*, 210 F. 2d 772, at 779:

> "The preferential hiring clause contained in the three contracts above-described was clearly illegal as it excludes new applicants at the threshold if they are not members of the Union in good standing, and de-

prives them of the thirty-day grace period within which they might become members after being hired. We think that the mere execution of a contract containing such a provision, even apart from its actual enforcement, constitutes 'discrimination in regard to hire' on the part of an employer and hence falls squarely within the prohibition of Section 8 (a) (3). For, as this Court, in so holding, stated in *Red Star Express Lines* v. *N. L. R. B.*, 196 F. 2d 78, 81, 'the existence of such an agreement without more tends to encourage membership in a labor organization. The individual employee is forced to risk discharge if he defies the contract by refusing to become a member of the union.' See also *N. L. R. B.* v. *Childs Co.*, 2 Cir., 195 F. 2d 617. Since the Union joined in the execution of the contracts containing these illegal provisions and assisted in enforcing them, it follows that the Union 'cause [d] * * * an employer to discriminate against an employee in violation of [Section 8] (a) (3)', thus violating Section 8 (b) (2). *N. L. R. B.* v. *National Maritime Union of America*, 2 Cir. 175 F. 2d 686, certiorari denied 338 U. S. 954, 70 S. Ct. 492, 94 L. Ed. 589.

"Nor is it of consequence, as the respondents contend, that each of the contracts contained a 'saving clause,' the intended effect of which was to salvage as much union security as possible should the preferential hiring provisions be invalidated. The inclusion of this vague 'saving clause' in each contract does not purge the preferential hiring provisions of their illegal effect. *Red Star Express Lines* v. *N. L. R. B., supra; N. L. R. B.* v. *Gaynor News Co.*, 2 Cir., 197 F. 2d 719, certiorari granted 345 U. S. 902, 73 S. Ct. 640, 97 L. Ed. 1339, re-argument ordered 345 U. S. 962, 73 S. Ct. 947, 97 L. Ed. 1382, affirmed by Supreme Court on February 1, 1954."[3]

To the same effect is the recent case of *N. L. R. B.* v. *Broderick Wood Prod. Co.*, 261 F. 2d 548, 557, 10 Cir.

I would reverse.

3. See *Radio Officers'* v. *N. L. R. B.*, 347 U. S. 17, 44, 45, 46, 51, 52.

APPENDIX II.

UNITED STATES COURT OF APPEALS
for the Seventh Circuit.
Chicago, Illinois.

Tuesday August 18, 1959.

Before:

Hon. F. Ryan Duffy, Chief Judge.
Hon. Elmer J. Schnackenberg, Circuit Judge.
Hon. Latham Castle, Circuit Judge.

JOHN L. LEWIS, HENRY G. SCHMIDT and JOSEPHINE ROCHE, as Trustees of the United Mine Workers of America Welfare and Retirement Fund,
Plaintiffs-Appellees,
vs.
QUALITY COAL CORPORATION, an Indiana Corporation,
Defendant-Appellant.

No. 12562

Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Indiana, Terre Haute Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of said District Court in this cause appealed from be, and the same is hereby, Affirmed, with Costs and Interest in Accordance with the Opinion of This Court Filed This Day.

APPENDIX III.

UNITED STATES COURT OF APPEALS
for the Seventh Circuit.
Chicago 10, Illinois.

Thursday, September 24, 1959.

Before:

Hon. F. Ryan Duffy, Circuit Judge.
Hon. Elmer J. Schnackenberg, Circuit Judge.
Hon. Latham Castle, Circuit Judge.

JOHN L. LEWIS, et al., *Plaintiffs-Appellees*, vs. QUALITY COAL CORPORATION, *Defendant-Appellant*.	Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.
No. 12562	

It is ordered by the Court that appellant's petition for a rehearing in the above entitled cause be, and the same is hereby, Denied.

(Schnackenberg, C. J. voted to grant a rehearing.)

APPENDIX IV.

UNITED STATES COURT OF APPEALS
for the Seventh Circuit.
Chicago 10, Illinois.

Tuesday, October 20, 1959.

Before:

Hon. Latham Castle, Circuit Judge.

JOHN L. LEWIS, et al., *Plaintiffs-Appellees.*	Appeal from the United States District Court for the Southern District of Indiana, Terre Haute Division.
No. 12562 *vs.*	
QUALITY COAL CORPORATION, *Defendant-Appellant.*	

On consideration of the motion of counsel for defendant-appellant for an additional stay of the issuance of the mandate of this Court.

It Is Hereby Ordered that the issuance of the mandate of this Court be further stayed to and including November 13, 1959.

APPENDIX V.

This Statute, 29 U. S. C. A. 158, reads:

"It shall be an unfair labor practice for an employer
• • •

8 (A)(1) To interfere with, restrain or coerce employees in the exercise of the rights guaranteed in Section 7.

8 (A)(2) • • •

8 (A)(3) By discrimination in regard to hire or tenure of employment or any term or condition to encourage or discharge membership in any labor organization; Provided, that nothing in this sub-chapter, or in any other statute of the U. S. shall preclude an employer from making an agreement with labor organization to require as a condition of employment membership therein on or after the 30th day following the beginning of such employment, or the effective date of such agreement, which ever is the latter."

29 U. S. C. A., Section 158 (b)

"(b) It shall be an unfair labor practice for a labor organization or its agents—

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 157 of this title: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein;
• • •

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a) (3) of this section or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground other than his failure to tender the periodic dues and the initia-

tion fees uniformly required as a condition of acquiring or retaining membership; * * *"

29 USCA 157. RIGHTS OF EMPLOYEES. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8 (a)(3), 158, (a)(3) of this title.

Petitioner's Affidavits.

1. Affidavit of Carl F. Kumpf at record page 100, reads as follows:

"'AFFIDAVIT OF CARL F. KUMPF.

"'Carl F. Kumpf being duly sworn on his oath says:

"That he is President of the Quality Coal Corporation, defendant in said cause. That he has been in the coal industry for many years.

"That if an employee is not a member of the United Mine Workers of America, when hired, said employee has until the morning of the 3rd day to belong to union or quit or get fired.

"That if an employee is a member of another district or local union, when hired he has until the morning of the 3rd day in which to transfer to local 7365, and pay up his dues.

"If non union employee refuses to join said union, then the defendants' union employees would refuse to work on instructions of the District or local union.

"That Article Nine, Section Two, of the Constitution of the United Mine Workers of America is:

'That all members of the organization shall refuse to work in and around a mine where a man or men work that does not belong to the Union.'

"That had he failed and refused to sign the agreements alleged in the 2nd amended complaint, the employees would be compelled to stop work under penalty of fine and suspension from the Union."

2. Affidavit of John Gettle at record pages 105, 106 reads as follows:

"John Gettle being duly sworn upon his oath deposes and says; it has been the rule in District #8 and our Local Union #7365 of the United Mine Workers of America, that when the mine owner or operator hires a new man and puts him to work and this new man is not a member of the United Mine Workers of America, he is required to sign an application for membership which in turn authorizes initiation and dues to be checked off his wages.

"This application to be signed on the morning of the third day or the third start. If this is not complied with, the members of Local Union #7365 would be bound by the Constitution of the United Mine Workers of America District #8 adopted at Brazil, Indiana, effective December 1, 1956 under Article Nine, Section Two.

'That all Members of the organization shall refuse to work in and around a mine where a man or men work that does not belong to the union'."

3. Affidavit of Fred Lister at record page 106, is:

"Fred Lister being duly sworn upon his oath deposes and says; it has been the rule in District #8 and our Local Union #7365 of the United Mine Workers of America, that when the mine owner or operator hires a new man and puts him to work and this new man is not a member of the United Mine Workers of America, he is required to sign an application for membership which in turn authorizes initiation and dues to be checked off his wages.

"This application to be signed on the morning of the third day or the third start. If this is not complied with the members of Local Union #7365 would be bound by the Constitution of the United Mine

Workers of America District #8 adopted at Brazil, Indiana, effective December 1, 1956 under Article Nine, Section Two.

'That all Members of the organization shall refuse to work in and around a mine where a man or men work that does not belong to the union'."

4. Affidavit of Clayton Weaver at record page 107, is:

"Clayton Weaver being duly sworn upon his oath deposes and says; it has been the rule in District #8 and our Local Union #7365 of the United Mine Workers of America, that when the mine owner or operator hires a new man and puts him to work and this new man is not a member of the United Mine Workers of America, he is required to sign an application for membership which in turn authorizes initiation and dues to be checked off his wages.

"This application to be signed on the morning of the third day or the third start. If this is not complied with, the members of Local Union #7365 would be bound by the Constitution of the United Mine Workers of America District #8 adopted at Brazil, Indiana, effective December 1, 1956 under Article Nine, Section Two.

'That all Members of the organization shall refuse to work in and around a mine where a man or men work that does not belong to the union'."

Respondent's Exhibits and Affidavits.

165 Exhibit A.

National Bituminous Coal Wage Agreement of 1950 as Amended Effective September 1, 1955.

* * * * *

Now, Therefore, This Agreement, effective September 1, 1955, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies

and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

Wages and Hours.

. . . . .

166 Vacation Payment.

. . . . .

Termination of Agreement.

. . . . .

167 Exhibit B.

National Bituminous Coal Wage Agreement of 1950 as Amended Effective October 1, 1956.

. . . . .

Now, Therefore, This Agreement effective October 1, 1956, by and between the coal operators, associations, companies and individuals signatory hereto and by and between such other and additional associations, companies and individuals as may hereafter become signatory hereto (hereinafter referred to as "Operators"), as parties of the first part, and the International Union, United Mine Workers of America (hereinafter referred to as "Mine

Workers") on behalf of each member thereof, as party of the second part, covering all of the bituminous coal mines owned or operated by said first parties, amends, modifies and supplements and, as amended, modified and supplemented, carries forward and preserves the terms and conditions of the "National Bituminous Coal Wage Agreement of 1950 as Amended September 29th, 1952", the "National Bituminous Coal Wage Agreement of 1950", and all previous Agreements as therein provided, such amendments, modifications and supplements being as follows, to wit:

Wages and Hours.

* * * * *

168 Vacation Payment.

* * * * *

Termination of Agreement.

* * * * *

169 Exhibit C.

National Bituminous Coal Wage Agreement of 1950
Effective March 5, 1950, to June 30, 1952.

Executed at Washington, D. C., March 5, 1950.

This Agreement, made this 5th day of March, 1950, by and between the coal operators and associations signatory hereto * * *. This Agreement (subject * * *), carries forward and preserves the terms and conditions of * * * the National Bituminous Coal Wage Agreement * * * as they existed on March 31, 1946 * * *.

Witnesseth: It is agreed that this contract is for the exclusive joint use and benefit of the contracting parties, as defined and set forth in this Agreement. It is agreed that the United Mine Workers of America is recognized herein as the exclusive bargaining agency representing the employees of the parties of the first part. It is further

agreed that as a condition of employment all employees shall be, or become, members of the United Mine Workers of America, to the extent and in the matter permitted by law. • • •

It is agreed that this Fund is an irrevocable trust created pursuant to Section 302(c) of the "Labor-Management Relations Act, 1947," • • •

Title to all the moneys paid into and or due and owing said Fund shall be vested in and remain exclusively in the Trustees of the Fund, and it is the intention of the parties hereto that said Fund shall constitute an irrevocable trust. • • •

• • • • •

It is stipulated and agreed by the contracting parties hereto that an annual audit of the Fund hereinabove
171 described shall be made by competent authorities to be designated by the Trustees of said Fund. A statement of the results of such audit shall be made available for inspection of interested persons at the principal office of the Trust Fund and at such other places as may be designated by the Trustees.

Failure of any Operator signatory hereto to make full and prompt payments to the "United Mine Workers of America Welfare and Retirement Fund of 1950" in the manner and on the dates herein provided shall, at the option of the United Mine Workers of America, be deemed a violation of this Agreement. • • •

• • • • •

B. It is hereby stipulated and agreed by the contracting parties with respect to the Fund created by the National Bituminous Coal Wage Agreement of 1947:

• • • • •

(2) The Operators signatory hereto hereby renounce and forever release any and all claim to or interest in payments made into the said 1947 fund.

• • • • •

(4) The parties hereto agree that the best interest of the beneficiaries of said trust fund would be served by having all unexpended or unobligated funds therein transferred as above provided, and agree that the Trustees thereof should transfer such funds to the new trust fund created by this Agreement.

• • • • •

172 Integrated Instrument.

This Agreement is an integrated instrument and its respective provisions are interdependent and shall be effective from and after March 5, 1950.

• • • • •

177 Exhibit E.

UNITED STATES DISTRICT COURT.

• • (Caption TH-58-C-1) • •

AFFIDAVIT OF JOSEPHINE ROCHE.

District of Columbia, City of Washington. } ss.

Josephine Roche, of 907 Fifteenth Street, N. W., in Washington of the District of Columbia, being sworn upon her oath deposes and says:

1. That she is one of the Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950 and is also Director of said Fund; and that the deponent is duly authorized by the Trustees of said Fund to make this Affidavit.

2. That she is a citizen of the State of Colorado.

3. That John L. Lewis is also one of the Trustees of the United Mine Workers of America Welfare and Retire-

ment Fund of 1950; and that he is a citizen of the State of Illinois.

4. That Henry G. Schmidt is also one of the Trustees of the United Mine Workers of America Welfare and Retirement Fund of 1950; and that he is a citizen of the State of Ohio.

178 5. That Charles A. Owen, appointed by the National Bituminous Coal Wage Agreement of 1950 as Trustee of the United Mine Workers of America Welfare and Retirement Fund of 1950, died on July 20, 1957, and pursuant to the terms of the trust instrument contained in that agreement and the amendments thereto, Henry G. Schmidt was nominated to succeed the deceased Charles A. Owen and was duly qualified on April 28, 1958.

Josephine Roche,
Director & Trustee, United Mine Workers of America Welfare and Retirement Fund of 1950.

Subscribed and sworn to this 28th day of August, 1958, as witness my hand and seal.

Sara E. Carey,
Notary Public.

(Seal)

My Commission expires April 14, 1961.

274 Exhibit G.

Constitution of the International Union, United Mine Workers of America, Washington, D. C.

Effective November 1, 1956.

Adopted at Cincinnati, Ohio October 8, 1956.

* * * * *

Article VI.

Local Unions.

Section 1. Local Unions may adopt such laws for their government as do not conflict with the laws or rulings of the International, * * *

* * * * *

Article XIV.

Local Unions, How Formed and Governed.

* * * * *

Sec. 9. Any member going to work in a non-union mine shall forfeit his membership and can be reinstated * * *

* * * * *

277 Exhibit H-1.

United Mine Workers of America.

John Owens, Secretary-Treasurer Tel. MEtropolitan 8-0.

United Mine Workers' Building,

Washington 5, D. C.

October 24, 1951

"To All Members, Committeemen and Officers of All Local Union, United Mine Workers of America

Dear Sirs and Brothers:

* * * * *

278 On the basis of the foregoing conclusions, the * * * Board, by unanimous vote, urges all members, local union officers * * * to not only refrain from participation in these unauthorized strikes, but to use their efforts and influence to prevent occurrence of said unauthorized strikes in contravention of the International Constitution * * *.

* * * * * *

279 Exhibit H-2.

United Mine Workers of America.

John Owens, Secretary-Treasurer Tel. MEtropolitan 8-0530

United Mine Workers' Building,

Washington 5, D. C.

May 17, 1956

To the Officers and Members of the United Mine Workers of America:

Declaration of Policy.

Local work stoppage involving a mine in whole or in part not officially authorized by the United Mine Workers of America, were prohibited by order dated October 24, 1951.

* * * * * *

The Executive Board further advises as follows:

* * * * * *

2. Local unions failing to do so, and resorting to local stoppages, will be subject to discipline and penalties. * * *

3. Local unions engaged in unwarranted local stoppages * * * will suffer double penalties.

* * * * * *

Done this 17th day of May, 1956 by the International Executive Board, United Mine Workers of America, Washington, D. C.

Attest:

John Owens,

(Seal) *Secretary-Treasurer.*

Respondent's Affidavit of Wilbert Killion.

280 Exhibit I.

IN THE UNITED STATES DISTRICT COURT.

* * * (Caption—TH-58-C-1) * * *

AFFIDAVITS OF WILBERT KILLION IN SUPPORT OF PLAINTIFFS' OPPOSITION TO DEFENDANT'S MOTION TO DISMISS AND FOR JUDGMENT ON THE PLEADINGS AND IN THE ALTERNATIVE IN SUPPORT OF THE PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT.

City of Washington, District of Columbia. } ss:

Wilbert Killion, of Brazil, Indiana, first being duly sworn, upon his oath deposes and says:

1. That he is a member of the United Mine Workers of America International Executive Board, representing District 8, United Mine Workers of America, and has been such representative since April, 1957.

* * * * *

4. That he was employed as a coal miner in mines operating in District 8, United Mine Workers of America, from November, 1945, to March, 1957.

* * * * *

281 7. That the statements contained in the affidavits of Carl F. Kumpf to the effect that "if an employee is not a member of the United Mine Workers of America, when hired, said employee has until the morning of the third day to belong to union or quit or get fired"; "if an employee is a member of another district or local union, when hired he has until the morning of the third day in which to transfer to Local 7365, and pay up his dues"; and

"If non-union employee refuses to join said union, then defendants' union employees would refuse to work on instructions of the District or local union", are not requirements of the United Mine Workers of America, or District 8, United Mine Workers of America, or of the National Bituminous Coal Wage Agreement of 1950 and the amendments thereto. Further, to the best knowledge and belief of the affiant, no officer of the United Mine Workers of America or District 8, United Mine Workers of America, has authorized or did, in fact, prescribe or enforce the requirements as stated above and contained in the affidavits of Carl F. Kumpf.

282 9. That during the period subsequent to March 5, 1950, the affiant is informed that the following employees worked in and around the mines of the Quality Coal Corporation, who were not members of the United Mine Workers of America, for the periods indicated:

a. Cletis Cornwell was employed by the Quality Coal Corporation on or about July, 1949, and joined the United Mine Workers of America September 8, 1955.

b. Boyce Downey was employed by the Quality Coal Corporation on or about October 15, 1952, and worked until February 15, 1955, without joining the United Mine Workers of America. He was laid off from February, 1955, until June, 1955, and joined the United Mine Workers of America, July 11, 1955.

c. Jesse V. Irvin was employed by the Quality Coal Corporation on or about August, 1957, and joined the United Mine Workers of America in January, 1958.

d. William Wheeler worked in and around the Quality Coal Corporation property on a part-time basis for

approximately six months and last worked in October 1957. Mr. Wheeler has never joined the United Mine Workers of America.

The above is not intended to be a complete list of men employed by Quality Coal Corp. who did not join the United Mine Workers of Am. immediately after employment; however, the affiant is without sufficient knowledge and information to state whether there are additional men in this category who were employed by Quality Coal Corp. after March 5, 1950.

Wilbert Killion.

Petitioner's Affidavits in Rebuttal to Respondent's exhibits and Affidavit of Wilbert Killion are:

312 Exhibit G.

IN THE UNITED STATES DISTRICT COURT.

(Caption—TH-58-C-1)

AFFIDAVIT OF ARTHUR KUMPF IN REBUTTAL TO THE AFFIDAVIT OF WILBERT KILLION AND IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

State of Indiana, }
County of Clay. }

Arthur Kumpf first being duly sworn upon his oath deposes and says:

2. Affiant further says that in the summer of 1952, one Frank Butler a local trucker was hired by the Quality Coal Corporation to transport coal from the Price pit to the truck tipple located near Carbon, Indiana. That said

affiant was employed by the Quality Coal Corporation as a dragline operator and was present when said Butler was informed by the coal loading shovel operator that he, Butler would have to join the union or they would not load his truck with coal when he returned. That the said Butler did not return to his job.

Affiant further states that when a non-union miner is employed at said corporation, that it had been the policy, practice and rule since 1949 for said non-union employees to join the union on the morning of the 3rd day of employment or quit. That if said non-union employee failed to join the union, the union employees would refuse to work, forcing the mine to close.

Affiant further sayeth not.

Arthur Kumpf.

• • • • •

314 Exhibit H.

In the United States District Court.

• • (Caption—TH-58-C-1) • •

AFFIDAVIT OF JACK LYNCH IN REBUTTAL TO THE AFFIDAVIT OF WILBERT KILLION AND IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

State of Indiana, }
County of Clay. }

Jack Lynch being first duly sworn upon his oath deposes and says:

• • • • •

2. That Jesse V. Irwin worked for the R & L Trucking Inc. in August 1957 as an operator of drag lines and trucks

and was never employed up to that time by the Quality Coal Corporation. That said Irwin while still employed by R & L Trucking, Inc. drove a truck in the Quality Coal Corporation pit for the first time on September 20, 1957, that one day and another day on October 8, 1957. That said Irwin applied for membership in United Mine Workers of America in December, 1957, after being employed in defendant's coal pit as truck driver. His first check-off of initiation fee of $10.00 and one month dues of $4.75 checked off in January of 1958 for dues of December, 1957.

That William Wheeler mentioned in said affidavit was a part time worker for the R & L Trucking, Inc. in hauling coal from the Quality Coal Corporation. That Mr. Wheeler never did join the United Mine Workers of America as he did not return to work on the 3rd consecutive day.

315 Further more affiant sayeth not.

Jack Lynch.

316 Exhibit I.

IN THE UNITED STATES DISTRICT COURT.

• • (Caption—TH-58-C-1) • •

AFFIDAVIT OF JOSEPH JENKINS IN REBUTTAL TO THE AFFIDAVIT OF WILBERT KILLION AND IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT.

State of Indiana, }
County of Clay. }

Joseph Jenkins being first duly sworn upon his oath deposes and says:

• • • • •

2. That Jesse V. Irwin worked for the R & L Trucking Inc. in August 1957 as an operator of drag lines and trucks and was never employed up to that time by the Quality Coal Corporation. That said Irwin while still employed by R & L Trucking, Inc. drove a truck in the Quality Coal Corporation pit for the first time on September 20, 1957, that one day and another day on October 8, 1957. That said Irwin applied for membership in United Mine Workers of America in December, 1957, after being employed in defendant's coal pit as truck driver. His first check-off of initiation fee of $10.00 and one month dues of $4.75 checked off in January of 1958 for dues of December, 1957.

That William Wheeler mentioned in said affidavit was a part time worker for the R & L Trucking, Inc. in hauling coal from the Quality Coal Corporation. That Mr. Wheeler never did join the United Mine Workers of America as he did not return to work on the 3rd consecutive day.

3. That affiant further shows that he knows of his
317 own knowledge that if a non-union employee is hired at the Quality Coal Corporation and does not join the union within a reasonable time thereafter, the union miners there employed would refuse to work with said non-union employee and quit work.

Further more affiant sayeth not.

Joseph Jenkins.

318 Exhibit J.

In the United States District Court.

(Caption—TH-58-C-1)

SUPPLEMENTAL AFFIDAVIT OF CARL KUMPF IN REBUTTAL TO THE AFFIDAVIT OF WILBERT KILLION AND IN SUPPORT OF DEFENDANTS MOTION TO DISMISS AND IN OPPOSITION TO PLAINTIFFS MOTION FOR SUMMARY JUDGMENT.

State of Indiana, }
County of Clay. }

Carl Kumpf, being first duly sworn on his oath deposes and says:

2. That this affidavit is made in reply to the affidavit of Wilbert Killion. Attached is copy of letter from UMWA threatening shut down of men in October, 1955.

3. Affiant further states that Cletis Cornwell was an automobile mechanic in the down town garage belonging to the defendant, Quality Coal Corporation which the said defendant purchased in the year 1949. That Cletis Cornwell never worked as a miner at defendants mine nor was he requested to belong to said union but that when he

joined said union, it was voluntary on his part and he still remained an automobile mechanic and never mined any coal.

4. Affiant further says that Boyce Downey mentioned in the said affidavit, worked as a mechanic for the defendant in their garage in down town Brazil, until July 11, 1955, when he quit his employment as a mechanic and secured employment with the defendant as a coal miner and then joined the union as soon as he went to work as a miner for defendant.

Affiant would further show that the Constitution of the United Mine Workers of America, District No. 8, effective December 1, 1956 under Article 10, Section 1 among other things provides:

319 "Any person getting work in or around the mine during the month, it shall be the duty of said person to immediately present a card to the check weighman or mine committee."

Affiant further states that the above quotation from said Constitution compels such a person to join the union and receive a union card immediately for presentation to a representative of said union. That if same is not complied with, all of his union employees would stop working, thereby forcing the mine to close.

Affiant further states that the exhibits attached to the affidavit of John Owens are matters pertaining to the international union and district unions and that he was not informed nor did he have knowledge of such letters and or exhibits mentioned in the Affidavit of John Owens. That he does not have sufficient knowledge or information to form a belief as to the distribution of said exhibits as stated in the Affidavit of John Owens. Affiant further says that he does not have sufficient knowledge or information other than hearsay as to the matters set out in the Affidavit of Josephine Roche and which is marked Exhibit "J." That

upon the advice of his Attorneys he is informed that the said Josephine Roche and her alleged co-trustees are without legal rights to act as Trustees for the reason that no Trustees in law existed. That Trustees could not be created unless there was trust property in existence and said Trust property was delivered to the alleged Trustees.

Affiant further sayeth not.

Carl Kumpf.

Subscribed and sworn to before me this 20th day of October, 1958.

Howard C. Dean,
Notary Public.

(Seal)

My commission expires: May 16, 1962.

320

United Mine Workers of America
District Number 8.
Wilbert Killion, Secretary Treasurer.
Telephone Brazil 2643
Brazil, Indiana.

October 13, 1955

Mr. Carl F. Kumpf, President
Quality Coal Corporation
111 South Forest Avenue
Brazil, Indiana
Dear Sir:

Unless you immediately contact the Welfare and Retirement Fund in order that satisfactory arrangements may be made for the settlement of your delinquent account, our members will be compelled to refrain from work on November 1, 1955, until the company again complies fully with the terms of the joint agreement.

Yours truly,
James Miller,
President, District Eight.